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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JASON WADE SENA, SHARON

JEANETTE SENA,

Plaintiffs,

v.

CITY OF MAYWOOD, a public entity,

BRUCE LEFLAR, J. PERKINS, JERRY

SALGADO, JOHN BOSTON, RYAN

WEST, BRENT TALMO, MEDA and

GARCIA and DOES 1 through 20,

inclusive, each of whom is sued

individually and in their official capacity

as police officers for the City of

Maywood,

Defendants.

) Case No. CV07-1724 AHM (JCx)

) Assigned For All Purposes To:

) The Honorable A. Howard Matz,

) Courtroom 14

)

) **DEFENDANTS' NOTICE OF**

) **MOTION AND MOTION FOR**

) **SUMMARY JUDGMENT OR, IN**

) **THE ALTERNATIVE, PARTIAL**

) **SUMMARY JUDGMENT;**

) **MEMORANDUM OF POINT AND**

) **AUTHORITIES IN SUPPORT**

) **THEREOF; DECLARATION OF**

) **MATTHEW J. SALCEDO**

)

) **DATE: April 21, 2008**

) **TIME: 10:00 a.m.**

) **PLACE: Courtroom 14**

) **JUDGE: Hon. A. Howard Matz**

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**Table of Contents**

I.	INTRODUCTION.....	3
II.	SUMMARY OF FACTS.....	3
III.	THE MOVING PARTY IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW WHERE THE EVIDENCE OR ARGUMENT SHOW THE PARTY HAS A COMPLETE DEFENSE OR THAT THE PLAINTIFFS LACK ESSENTIAL EVIDENCE TO MEET THEIR BURDEN OF PROOF. ....	4
IV.	THE DEFENDANT OFFICERS HAVE A COMPLETE DEFENSE TO THE PLAINTIFFS' CLAIMS BECAUSE THEY ARE ENTITLED TO QUALIFIED IMMUNITY. ....	6
A.	DEFENDANT OFFICERS PERKINS, MEDA, GARCIA, BOSTON, AND WEST HAVE QUALIFIED IMMUNITY RELATIVE TO THE INCIDENT OF MARCH 29, 2006.....	8
1.	Defendant Officer PERKINS Had Probable Cause To Arrest Plaintiff JASON SENA On March 29, 2006.....	8
2.	Defendant Officers Did Not Use Excessive Force Upon JASON SENA On March 29, 2006.....	9
3.	Defendant Officers MEDA, GARCIA, BOSTON, And WEST Did Not Participate In The Arrest Or Prosecution Of JASON SENA On March 29, 2006 And, Therefore, Cannot Be Held Liable For False Arrest Or Malicious Prosecution Thereon.....	11

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

4.	The Impoundment And Towing Of JASON SENA's Vehicle On March 29, 2006 Was Lawful.....	12
B.	DEFENDANT OFFICERS TALMO AND SALGADO HAVE QUALIFIED IMMUNITY RELATIVE TO THE INCIDENT OF APRIL 5, 2006.....	13
1.	Defendant Officer TALMO Had Probable Cause To Arrest JASON SENA On April 5, 2006.....	13
2.	Defendant Officers TALMO And SALGADO Did Not Use Excessive Force Upon JASON SENA On April 5, 2006.....	14
3.	SHARON SENA's Claims Against Defendant TALMO Relative To The Incident Of April 5, 2006 Are Without Merit.....	15
4.	Defendant Officer SALGADO Had Official Discretion To Release JASON SENA's Impounded Vehicle On April 5, 2006.....	16
C.	DEFENDANT OFFICER TALMO HAS QUALIFIED IMMUNITY RELATIVE TO THE INCIDENT OF APRIL 7, 2006.....	17
1.	Defendant Officer TALMO Had Probable Cause To Detain JASON SENA On April 7, 2006.....	18
2.	Defendant Officer TALMO's Arrest Of JASON SENA On April 7, 2006 Was The Result Of A Mistake Of Fact And Law.....	18

1	V.	PLAINTIFFS' <i>MONELL</i> CLAIM FOR RELIEF AGAINST THE CITY SHOULD BE	
2		DISMISSED.....	21
3			
4	A.	PLAINTIFFS CANNOT PROVE AN UNDERLYING CONSTITUTIONAL	
5		VIOLATION. ....	23
6			
7	B.	PLAINTIFFS HAVE NOT APPROPRIATELY IDENTIFIED THE CUSTOMS	
8		OR POLICIES THAT CAUSED THEIR CONSTITUTIONAL	
9		DEPRIVATION. ....	24
10			
11	C.	PLAINTIFFS HAVE NOT PRESENTED EVIDENCE REGARDING ANY	
12		UNCONSTITUTIONAL ACTS BY FINAL POLICYMAKERS. ....	24
13			
14	D.	PLAINTIFFS HAVE NOT ESTABLISHED A CAUSAL LINK BETWEEN	
15		ANY MUNICIPAL POLICY, CUSTOM OR SUPERVISORY ACT AND	
16		THEIR ALLEGED INJURY.....	25
17	VI.	PLAINTIFF JASON SENA'S DAMAGES, IF ANY, MUST BE LIMITED BECAUSE	
18		HE IS NOT SUFFERING FROM ANY INJURIES AS A RESULT OF THE	
19		ALLEGATIONS IN THE INSTANT COMPLAINT.....	25
20			
21	VII.	PLAINTIFF SHARON SENA'S DAMAGES, IF ANY, MUST BE LIMITED	
22		BECAUSE SHE HAS FAILED TO MITIGATE ANY DAMAGE WHICH SHE	
23		ALLEGEDLY SUFFERED AS A RESULT OF THE ALLEGATIONS IN THE	
24		INSTANT COMPLAINT. ....	26
25			
26	VIII.	CONCLUSION .....	27
27			

**Table of Authorities**

**Cases**

<i>Adickes v. S.H. Kress &amp; Co.</i> , 398 U.S. 144, 157 (1970) .....	4
<i>Aguillard v. McGowan</i> , 207 F.3d 226 (5 <sup>th</sup> Cir. 2000) .....	23
<i>Atwater v. City of Lago Vista</i> , 121 S.Ct. 1536 (2001).....	6
<i>Benson v. Hightower</i> (9 <sup>th</sup> Cir. 1980) 633 F.2d 869 .....	18
<i>Blair v. City of Pomona</i> , 223 F.3d 1074 (9 <sup>th</sup> Cir. 2000).....	22
<i>Board of Comm'rs of Bryan County v. Brown</i> , 520 U.S. 397, 404, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997) .....	21, 23, 24
<i>Butz v. Economou</i> (1978) 438 U.S. 478 .....	19
<i>Carter v. District of Columbia</i> , 795 F. 2d 116, 123-124 (D.C. Cir. 1986).....	22
<i>Celotex Corp. v. Catrett</i> (1986) 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 .....	5
<i>City of Canton v. Harris</i> , 489 U.S. 378, 389, 109 S. Ct. 1197 (1989) .....	21, 22
<i>City of Los Angeles v. Heller</i> , 475 U.S. 796, 106 S. Ct. 1571, 89 L. Ed. 2d 806 (1986) .....	23
<i>City of St. Louis v. Praprotnik</i> , 485 U.S. 112, 126, 108 S. Ct. 915, 926 (1988) .....	21, 22
<i>Colburn v. Upper Darby Township</i> , 946 F.2d 1017, 1028 (3d Cir. 1991).....	25
<i>DeBoer v. Pennington</i> , 206 F.3d 857, 864 (9 <sup>th</sup> Cir. 2000) .....	7
<i>Doe v. Dallas Independent School Dist.</i> , 153 F.3d 211, 217-219 (5 <sup>th</sup> Cir. 1998) .....	8
<i>Eaton v. Meneley</i> , 379 F.3d 949-954 (10 <sup>th</sup> Cir. 2004).....	7
<i>Fortune v. Amer. Multi-Cinema, Inc.</i> , 364 F.3d 1075, 1080 (9 <sup>th</sup> Cir. 2004) .....	4
<i>Gable v. City of Chicago</i> , 296 F.3d 531, 537 (7 <sup>th</sup> Cir. 2002) .....	21
<i>Hamilton v. Rodgers</i> , 791 F.2d 439, 443-444 (5 <sup>th</sup> Cir. 1986) .....	22
<i>Harlow v. Fitzgerald</i> (1982) 457 U.S. 800, 818, 73 L.Ed.2d 396, 102 S.Ct. 2727 .....	7
<i>Hernandez v. Texas Dept. of Protective Services</i> , 380 F.3d 872, 882-884 (5 <sup>th</sup> Cir. 2004) .....	8
<i>Johnson v. Hardin County</i> , 908 F.2d 1280, 1285 (6 <sup>th</sup> Cir. 1990).....	25
<i>Lies v. Farrell Lines, Inc.</i> , 641 F.2d 765, 769 (9 <sup>th</sup> Cir. 1981).....	4
<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i> , 475 U.S. 574, 586 (1986) .....	6
<i>McCoy v. City of Monticello</i> , 342 F.3d 842, 846 (8 <sup>th</sup> Cir. 2003).....	8

1	<i>McDade v. West</i> , 223 F.3d 1135, 1142 (9 <sup>th</sup> Cir. 2000).....	21
2	<i>Midwest Growers Co-Op Corp. v. Kirkemo</i> (9 <sup>th</sup> Cir. 1976) 533 F.2d 455.....	19
3	<i>Miranda v. City of Cornelius</i> (9 <sup>th</sup> Cir. 2005) 429 F.3d 858.....	16
4	<i>Monell v. Dep't. of Soc. Serv.</i> , 436 U.S. 658, 690, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).....	21
5	<i>Nissan Fire &amp; Marine Insur. Co., Ltd. v. Fritz Cos. Inc.</i> , 210 F.3d 1099, 1102 (9 <sup>th</sup> Cir. 2000).....	5
6	<i>Ogborn v. City of Lancaster</i> , (2002) 101 Cal.App.4th 448, 459.....	7
7	<i>Quintanilla v. City of Downey</i> , 84 F.3d 353, 354-356 (9 <sup>th</sup> Cir. 1996).....	23
8	<i>Saucier v. Katz</i> , 533 U.S. 194, 200 (2001).....	7
9	<i>Schwenk v. Hartford</i> , 204 F.3d 1187, 1198 (9 <sup>th</sup> Cir. 2000).....	6
10	<i>Shelton v. U.S. Customs Service</i> (9 <sup>th</sup> Cir. 1977) 565 F.2d 1140.....	18
11	<i>Sorreles v. McKee</i> , 290 F.3d 965, 970 (9 <sup>th</sup> Cir. 2002).....	8
12	<i>Southern Calif. Gas Co. v. City of Santa Ana</i> , 336 F.3d 885, 888 (9 <sup>th</sup> Cir. 2003.).....	5
13	<i>Thompson v. City of Los Angeles</i> , 885 F.2d 1439, 1444 (9 <sup>th</sup> Cir. 1997).....	21
14	<i>Trevino v. Gates</i> , 99 F.3d 911, 918 (9 <sup>th</sup> Cir. 1996).....	21
15	<i>Wayne v. Jarvis</i> , 197 F.3d 1098, 1105 (11 <sup>th</sup> Cir. 1999).....	24
16	<b>Statutes</b>	
17	42 U.S.C. § 1983.....	3, 16
18	Fed R. Civ. Proc. 56(a), (b).....	4
19	Fed R. Civ. Proc. 56(c).....	6
20	Fed. R. Civ. Proc. 56(d).....	4
21	Penal Code § 422.....	13
22	Penal Code § 69.....	13
23	<i>Penal Code</i> § 836(a)(1).....	8
24	Rule 56(c).....	5
25		
26		
27		

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 **PLEASE TAKE NOTICE** that on April 21, 2008, at 10:00 a.m. in Courtroom  
3 14 of the above-entitled court, located at 312 N. Spring Street in Los Angeles,  
4 California, Defendants CITY OF MAYWOOD, a municipal corporation and public  
5 entity, BRUCE LEFLAR, JASON PERKINS, JERRY SALGADO, JOHN  
6 BOSTON, RYAN WEST, BRENT TALMO, MEDA, and GARCIA (hereinafter  
7 "Defendants") will move this court for summary judgment as to Plaintiffs' entire  
8 complaint as there are no genuine issues of material fact with regard to the claims  
9 that Plaintiffs are making therein.

10 In the alternative, Defendants will move for partial summary judgment  
11 pursuant to rule 56 of the Federal Rules of Civil Procedure against Plaintiffs on the  
12 ground that there are no genuine issues of material fact with regard to the issues set  
13 forth in the attached Memorandum of Points and Authorities.

14 The Motion will be based upon this notice, the attached Memorandum of  
15 Points and Authorities, Defendants' Separate Statement of Uncontroverted Facts and  
16 Supporting Evidence, the complete court file in this action, the declaration of  
17 Matthew J. Salcedo and all exhibits attached thereto, and upon such other oral and  
18 documentary evidence as the court may consider on this Motion.

19 This Motion is made following a meet and confer session between counsel,  
20 which took place on March 24, 2008.

21 Respectfully Submitted,

22 Dated: March 31, 2008

BOHM, MATSEN, KEGEL & AGUILERA, LLP

23 By: 

24 Matthew J. Salcedo,  
25 Attorneys for Defendants CITY OF  
26 MAYWOOD, a municipal corporation and  
27 public entity, BRUCE LEFLAR, JERRY  
SALGADO, JOHN BOSTON, RYAN WEST,  
BRENT TALMO, MEDA and GARCIA

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs filed suit against Defendants on March 9, 2007 alleging claims based on 42 U.S.C. § 1983, involving, inter alia, use of excessive force, deprivation of rights under color of law, false arrest without probable cause, and malicious prosecution. Plaintiffs have also filed a *Monell* claim against the City of Maywood and Maywood-Cudahy Police Department Chief Bruce Leflar. The Defendant Officers named in the lawsuit are Officers JASON PERKINS, JERRY SALGADO, JOHN BOSTON, RYAN WEST, BRENT TALMO, MEDA and ADAM GARCIA.

**II. SUMMARY OF FACTS**

Plaintiffs' Complaint alleges myriad constitutional violations stemming from three main incidents. The first incident occurred on March 29, 2006, where Plaintiff JASON SENA was arrested for traffic violations and driving without a valid license. On that date, Plaintiffs claim that JASON SENA was beaten by the Defendant Officers JASON PERKINS, JOHN BOSTON, RYAN WEST, MEDA, and GARCIA. They further claim that the Defendant Officers allowed a narcotics police dog to attack JASON SENA and place him in fear of serious physical injury. Despite Plaintiffs' claims, Officer PERKINS, the arresting officer, had probable cause to arrest JASON SENA, and probable cause to search JASON SENA's vehicle. None of the Defendant Officers that responded to Officer PERKINS' Code 3 back-up assistance call physically assaulted or threatened JASON SENA in any way.

The second incident encompasses events that took place on April 5, 2007, at the Maywood-Cudahy Police Department's Records Office. Plaintiffs claim that Defendant Officers TALMO and SALGADO deprived JASON SENA of the right to have his vehicle released, which was impounded after his March 29, 2006 arrest. Plaintiffs further allege that Defendant Officers TALMO and SALGADO brutalized JASON SENA by shooting him with Taser darts and assaulting him at the Records



Office, and that Officer TALMO physically threw SHARON SENA out of the Records Office and onto the sidewalk. Plaintiffs, however, ignore the fact that JASON SENA was causing public disturbances on each occasion he entered the Records Office lobby that day, and that he threatened to come back and shoot and kill Officers TALMO and SALGADO. Based on JASON SENA's conduct, Officer TALMO deployed two Taser darts in his chest and placed him under arrest for terrorist threat against an executive officer and resisting arrest, both felonies.

Last, Plaintiff JASON SENA claims that Officer TALMO arrested him without probable cause on April 7, 2006, right after he had been arraigned and released on his own recognizance. Officer TALMO, however, arrested JASON SENA pursuant to orders given by his superiors at the Maywood-Cudahy Police Department, and did so with a good faith belief that he was acting in compliance with law and the rights of JASON SENA.

**III. THE MOVING PARTY IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW WHERE THE EVIDENCE OR ARGUMENT SHOW THE PARTY HAS A COMPLETE DEFENSE OR THAT THE PLAINTIFFS LACK ESSENTIAL EVIDENCE TO MEET THEIR BURDEN OF PROOF.**

Summary judgment is appropriate when the moving party demonstrates that there exists no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. (*Adickes v. S.H. Kress & Co.* (1970) 398 U.S. 144, 157, 90 S.Ct. 1598, 26 L.Ed.2d 142; *Fortyune v. Amer. Multi-Cinema, Inc.* (9<sup>th</sup> Cir. 2004) 364 F.3d 1075, 1080.) The court may grant summary judgment as to any claim or defense. (Fed R. Civ. Proc. 56(a), (b).) Further, the court may grant partial summary judgment on discrete elements of claims. (Fed. R. Civ. Proc. 56(d); *Lies v. Farrell Lines, Inc.* (9<sup>th</sup> Cir. 1981) 641 F.2d 765, 769.) Defendants can move for summary judgment either by proving that they have a complete defense or by

1 showing that Plaintiffs cannot meet their burden of proof. (*Celotex Corp. v. Catrett*  
2 (1986) 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265.)

3 Defendants moving for summary judgment may meet their burden by  
4 presenting evidence establishing all the elements of an affirmative defense entitling  
5 the party to judgment in its favor. (*Southern Calif. Gas Co. v. City of Santa Ana* (9<sup>th</sup>  
6 Cir. 2003) 336 F.3d 885, 888.) Where the evidence establishes every element of an  
7 affirmative defense, Defendants do not need to submit evidence to negate or disprove  
8 Plaintiffs' claims. (*Celotex Corp, supra*, 477 U.S. at 323.)

9 Defendants moving for summary judgment may also move for summary  
10 judgment on the ground that the Plaintiffs cannot establish their claim. (*Nissan Fire*  
11 *& Marine Insur. Co., Ltd. v. Fritz Cos. Inc.* (9<sup>th</sup> Cir. 2000) 210 F.3d 1099, 1102.)  
12 Defendants can meet their burden of production by disproving an essential element of  
13 Plaintiffs' claim. (*Id.*) Alternatively, Defendants can meet their burden of production  
14 by showing Plaintiffs lack sufficient evidence regarding an essential element of their  
15 claim and thus cannot carry their burden of persuasion at trial. (*Celotex Corp, supra*,  
16 477 U.S. at 323.) "[W]here the nonmoving party will bear the burden of proof at trial  
17 on a dispositive issue, a summary judgment motion may properly be made in reliance  
18 solely on the pleadings, depositions, answers to interrogatories, and admissions on  
19 file." (*Id.*) Moreover, summary judgment should be entered, after adequate time for  
20 discovery and upon motion, against a party who fails to make a showing sufficient to  
21 establish the existence of an element essential to that party's case, and on which that  
22 party will bear the burden of proof at trial. (*Id.* at 322.) "[A] complete failure of  
23 proof concerning an essential element of the nonmoving party's case necessarily  
24 renders all other facts immaterial." (*Id.*) In such a circumstance, summary judgment  
25 should be granted, "so long as whatever is before the district court demonstrates that  
26 the standard for entry of summary judgment, as set forth in Rule 56(c), is satisfied."  
27 (*Id.* at 323.)

1 Plaintiffs may not rely upon the mere allegations or denials of their pleadings;  
 2 but rather, must tender evidence of specific facts in the form of affidavits and/or  
 3 admissible discovery material in support of his contention that a dispute exists. (Fed  
 4 R. Civ. Proc. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.* (1986) 475  
 5 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 .) The “purpose of summary  
 6 judgment is to pierce the pleadings and to assess the proof in order to see whether  
 7 there is a genuine need for trial.” (*Id.* at 587.) To demonstrate a genuine issue, the  
 8 opposing party “must do more than simply show that there is mere metaphysical  
 9 doubt as to the material facts...Where the record taken as a whole could not lead a  
 10 rational trier of fact to find for the nonmoving party, there is no genuine issue for  
 11 trial.” (*Id.*)

12 The instant motion and supporting evidence demonstrate that Defendants are  
 13 entitled to summary judgment or, in the alternative, partial summary judgment as the  
 14 Court deems appropriate.

15 **IV. THE DEFENDANT OFFICERS HAVE A COMPLETE DEFENSE TO**  
 16 **THE PLAINTIFFS’ CLAIMS BECAUSE THEY ARE ENTITLED TO**  
 17 **QUALIFIED IMMUNITY.**

18 The doctrine of qualified immunity is a recognition of the fact that “even  
 19 where personal liability does not ultimately materialize, the mere ‘specter of  
 20 liability’ may inhibit public officials in the discharge of their duties.” (*Atwater v.*  
 21 *City of Lago Vista* (2001) 533 U.S. 924, 121 S.Ct. 2540, 150 L.Ed.2d 709 [holding  
 22 that the defendant officers were entitled to qualified immunity for the decision to  
 23 arrest, handcuff and take to jail a driver who failed to wear her seat belt and failed to  
 24 fasten her children in seat belts].) The purpose of qualified immunity is therefore to  
 25 allow officials to take action “with independence and without fear of consequences.”  
 26 (*Schwenk v. Hartford* (9<sup>th</sup> Cir. 2000) 204 F.3d 1187, 1198.) Qualified immunity thus  
 27 acknowledges that when an official acts in a manner that is not *clearly unlawful*, the

1 public interest is better served by the official being able to make independent and  
2 expeditious judgments without fear of consequences, even if those judgments  
3 occasionally turn out to be erroneous. (*DeBoer v. Pennington* (9<sup>th</sup> Cir. 2000) 206  
4 F.3d 857, 864.)

5 Qualified immunity is an entitlement not to go to trial, not merely a defense  
6 from liability. (*Saucier v. Katz* (2001) 533 U.S. 194, 200, 121 S.Ct. 2151, 150  
7 L.Ed.2d 272.) It should be decided early in the proceedings. *Ibid.* Analysis of the  
8 qualified immunity defense is a two-step process. The initial inquiry is whether, on  
9 the facts alleged, a constitutional right has been violated. If no such right has been  
10 violated, plaintiff cannot prevail. (*Id.* at 200-201.) If a violation of a constitutional  
11 right does or may exist, the court must consider whether that right was "clearly  
12 established."

13 Qualified immunity serves to shield government officials "from liability for  
14 civil damages insofar as their conduct does not violate clearly established statutory  
15 or constitutional rights of which a reasonable person would have known." (*Harlow*  
16 *v. Fitzgerald* (1982) 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396.) Law  
17 enforcement officers are entitled to qualified immunity if they act reasonably under  
18 the circumstances, even if the actions result in a constitutional violation. (*Ogborn v.*  
19 *City of Lancaster* (2002) 101 Cal.App.4th 448, 459, 124 Cal.Rptr.2d 238.)  
20 Governmental officials further are entitled to qualified immunity under 42 U.S.C.  
21 §1983 when exercising discretionary functions, unless the officials violate clearly  
22 established law. (*Eaton v. Meneley* (10<sup>th</sup> Cir. 2004) 379 F.3d 949-954.)

23 The Supreme Court has set forth a two-pronged inquiry to resolve all qualified  
24 immunity claims. First, "taken in the light most favorable to the party asserting the  
25 injury, do the facts alleged show the officers' conduct violated a constitutional  
26 right?" (*Saucier, supra*, 533 U.S. at 201.) Second, if so, was that right clearly  
27 established? (*Id.*) "The relevant, dispositive inquiry in determining whether a right

1 is clearly established is whether it would be clear to a reasonable officer that his  
 2 conduct was unlawful in the situation he confronted." (*Id.* at 202.) This inquiry is  
 3 wholly objective and is undertaken in light of the specific factual circumstances of  
 4 the case. (*Id.* at 201; see also *Sorrells v. McKee* (9<sup>th</sup> Cir. 2002) 290 F.3d 965, 970.)

5 An officer does not lose his or her qualified immunity because of a mistaken  
 6 belief, nor does the officer lose immunity because of a reasonable mistake as to the  
 7 legality of the officer's actions. (*McCoy v. City of Monticello* (8<sup>th</sup> Cir. 2003) 342  
 8 F.3d 842, 846.) Similarly, actions and decisions by government officials that are  
 9 inept, erroneous, ineffective or negligent are still entitled to qualified immunity  
 10 because such conduct does not amount to deliberate indifference, which is the  
 11 prerequisite for divesting the officials of qualified immunity. (*Hernandez, ex rel.*  
 12 *Hernandez v. Texas Dept. of Protective Services* (5<sup>th</sup> Cir. 2004) 380 F.3d 872, 882-  
 13 884; *Doe v. Dallas Independent School Dist.* (5<sup>th</sup> Cir. 1998) 153 F.3d 211, 217-219.)

14 **A. DEFENDANT OFFICERS PERKINS, MEDA, GARCIA, BOSTON,**  
 15 **AND WEST HAVE QUALIFIED IMMUNITY RELATIVE TO THE**  
 16 **INCIDENT OF MARCH 29, 2006.**

17 **1. Defendant Officer PERKINS Had Probable Cause To Arrest**  
 18 **Plaintiff JASON SENA On March 29, 2006.**

19 A peace officer may arrest a person if the officer has probable cause to believe  
 20 that the person has committed a public offense in the officer's presence. (*Penal Code*  
 21 § 836(a)(1).) On March 29, 2006, Officer PERKINS observed JASON SENA driving  
 22 his silver Toyota Camry at an excessive rate of speed. (UMF 1, 2.) Based on Officer  
 23 PERKINS' experience and training in the field, this was a violation of the posted  
 24 speed limit in the area. (UMF 3.) Officer PERKINS also observed that the front  
 25 windshield of JASON SENA's car was cracked. (UMF 15.) These observations in  
 26 the field gave Officer PERKINS probable cause to pull JASON SENA over for a  
 27 routine traffic stop.

1 When Officer PERKINS stopped JASON SENA along the 4100 block of W.  
2 Santa Ana Street (UMF 4, 8), JASON SENA did not pull his car all the over to the  
3 curb; rather, he stopped in the middle of the lane, a distance away from the curb  
4 (UMF 9). This created a traffic hazard, as the area where JASON SENA was stopped  
5 was partly residential. (UMF 6, 10.) JASON SENA also had both of his hands  
6 outside his driver side window. (UMF 12.)

7 Officer PERKINS learned through a DMV records search that JASON SENA  
8 was driving his vehicle without a valid license. (UMF 16.) Indeed, upon asking  
9 JASON SENA for his license, JASON SENA did not have a valid Class C license in  
10 his possession. (UMF 13.) Driving without a valid license in California is a  
11 misdemeanor offense. (UMF 20.) Officer PERKINS also observed that JASON  
12 SENA did not have his front license plate affixed to the vehicle. (UMF 14.) These  
13 were violations of the Vehicle Code in addition to JASON SENA's initial speeding.

14 Officer PERKINS presented JASON SENA with a Notice to Appear, which  
15 identified each of JASON SENA's traffic violations. (UMF 17.) JASON SENA  
16 refused to sign the Notice to Appear presented to him. (UMF 18.) Officer PERKINS  
17 was compelled by law to arrest JASON SENA because JASON SENA refused to sign  
18 the Notice to Appear. (UMF 19.) Officer PERKINS charged JASON SENA with  
19 violations of Vehicle Code §§ 26710, 5200(a), and 12500(a) (UMF 25, 26, 27), and  
20 arrested JASON SENA (UMF 28).

21 Given the foregoing, Officer PERKINS had probable cause to arrest JASON  
22 SENA on March 29, 2006.

23 **2. Defendant Officers Did Not Use Excessive Force Upon JASON**  
24 **SENA On March 29, 2006.**

25 Officer PERKINS assisted JASON SENA out of the car on March 29, 2006.  
26 (UMF 21.) Officer PERKINS performed a pat-down search of JASON SENA (UMF  
27 22.) JASON SENA did not feel harmed by this pat-down search. (UMF 23.) After

1 the pat-down, Officer PERKINS led JASON SENA to the curb to sit down as Officer  
2 PERKINS waited for back-up. (UMF 24.) About 20-30 seconds later, Officers  
3 MEDA, GARCIA, BOSTON, and WEST showed up at the scene (UMF 29) and all  
4 saw JASON SENA sitting on the curb (UMF 30).

5 When Officer GARCIA arrived, he heard JASON SENA say that he was  
6 involved in a fight prior to being pulled over by Officer PERKINS (UMF 36), and  
7 struck in the nose area during that fight on March 29, 2006 (UMF 37). Officer  
8 GARCIA also heard JASON SENA say that he was going to sue Defendants for the  
9 injuries he sustained in the fight. (UMF 38.) Indeed, JASON SENA admits that his  
10 black eye was not a result of being punched by any Defendant Officer that night.  
11 (UMF 88.)

12 At no time while the Defendant Officers were on the scene did any of them  
13 strike or kick JASON SENA (UMF 82, 83); throw JASON SENA down to the ground  
14 (UMF 86); place JASON SENA in threat of physical abuse (UMF 85); or say  
15 anything harassing to JASON SENA (UMF 84). At no time did any of the Defendant  
16 Officers draw their guns, batons, or any other weapon. (UMF 40.)

17 Officer WEST arrived at the scene with a 40 to 50 lb. narcotics search dog.  
18 (UMF 58.) The police dog was leashed and was kept at least 10 feet away from  
19 JASON SENA at all times. (UMF 47, 48, 49.) At no time did any of the Defendant  
20 Officers use the police dog to snarl or bark at JASON SENA (UMF 51,52), or to  
21 physically assault, provoke, or threaten JASON SENA (UMF 43, 45, 53, 54). In fact,  
22 JASON SENA admits that the police dog never made any physical contact with  
23 JASON SENA (UMF 41, 42) and that no officer touched JASON SENA when the  
24 dog was near JASON SENA. (UMF 44.)

25 While JASON SENA was yelling profanities at the Defendant Officers much  
26 of the time, none of them responded to JASON SENA (UMF 35, 84), and there was  
27 no indication that escalated use of force was required (UMF 61). Instead, the other



1 Officers were solely there at the scene to provide assistance to Officer PERKINS if  
2 necessary. Indeed, JASON SENA saw some of the Defendant Officers talking  
3 together around his vehicle while he was sitting on the curb (UMF 31), and others  
4 were standing on the sidewalk near him (UMF 32, 33).

5 Officer WEST used the police dog to search JASON SENA's vehicle at Officer  
6 PERKINS' request (UMF 60), and another Defendant Officer helped Officer  
7 PERKINS lift JASON SENA from the curb (UMF 69) and placed him in Officer  
8 PERKINS' patrol car (UMF 73) because JASON SENA was about 310 lbs. and very  
9 cumbersome at the time (UMF 68).

10 Before being placed in the patrol car, no Defendant Officer slammed JASON  
11 SENA's body up against the curb. (UMF 87.) When JASON SENA was being led to  
12 Officer PERKINS' patrol car for transport, JASON SENA admits that no Defendant  
13 Officer struck him as he walked to the patrol car. (UMF 77, 89.) JASON SENA had  
14 trouble getting into the patrol car given his body weight and mass (UMF 71, 72) but  
15 he states that the patrol car door was open (UMF 74) and that Officer PERKINS and  
16 the other Defendant Officer helping him did not push JASON SENA up into the  
17 metal frame/body of the patrol car (UMF 75). Rather, Officer PERKINS and the  
18 other Defendant Officer were trying to fit JASON SENA into the interior of the patrol  
19 car (UMF 75) and JASON SENA hit his head in the process (UMF 76) due to the  
20 difficulty he had getting into the patrol car.

21 Based on the foregoing, the Defendant Officers did not use excessive force on  
22 JASON SENA on March 29, 2006.

23 **3. Defendant Officers MEDA, GARCIA, BOSTON, And WEST Did**  
24 **Not Participate In The Arrest Or Prosecution Of JASON SENA**  
25 **On March 29, 2006 And, Therefore, Cannot Be Held Liable For**  
26 **False Arrest Or Malicious Prosecution Thereon.**

27 Officer PERKINS was the handling officer on scene on March 29, 2006. He



1 alone filled out the booking slip, the Arrest Report, and the Narrative Report  
2 regarding the arrest of JASON SENA on March 29, 2006. (UMF 63, 64, 65, 66.)  
3 After Officer PERKINS finished his investigation, he alone transported JASON  
4 SENA to MPD for booking. (UMF 78, 79.) Officer WEST arrived only after Officer  
5 PERKINS had arrested JASON SENA and did not participate in the arrest. (UMF  
6 39.) Officer GARCIA was not involved in the arrest of JASON SENA or the scene  
7 investigation (UMF 34) and none of the other Defendant Officers even spoke to  
8 JASON SENA (UMF 35, 84). Thus, while Officers WEST, GARCIA, BOSTON,  
9 and MEDA arrived at the scene, they did not participate in the arrest of JASON  
10 SENA and cannot be held liable to JASON SENA for his arrest or malicious  
11 prosecution.

12 **4. The Impoundment And Towing Of JASON SENA's Vehicle On**  
13 **March 29, 2006 Was Lawful.**

14 Pursuant to MPD policy, MPD officers have discretion to order the towing of  
15 vehicles stopped in Cudahy that are driven by unlicensed drivers. (UMF 91.) If a  
16 person is arrested by an MPD officer in Cudahy, their car is towed per policy. (UMF  
17 92.) Further, per policy, if an MPD officer orders the impoundment of a vehicle, the  
18 vehicle must be stored inside a secured structure, such as an on-call towing company  
19 facility (UMF 93), and a CHP 180 form must be executed (UMF 94).

20 As an MPD officer, Officer PERKINS had complete discretion to tow and  
21 impound JASON SENA's vehicle after arresting JASON SENA. Further, as JASON  
22 SENA was the sole occupant of his vehicle, there was nobody available to driver his  
23 vehicle off the scene. As Officer PERKINS acted reasonably and pursuant to MPD  
24 policy, he cannot be held liable for unlawful impoundment and towing.

25 ///

26 ///

27 ///

**B. DEFENDANT OFFICERS TALMO AND SALGADO HAVE  
QUALIFIED IMMUNITY RELATIVE TO THE INCIDENT OF  
APRIL 5, 2006.**

**1. Defendant Officer TALMO Had Probable Cause To Arrest  
JASON SENA On April 5, 2006.**

On April 5, 2006, Officer Talmo arrested JASON SENA and charged him with Criminal Threats under Penal Code § 422 and with Obstructing/Delaying/Threatening an executive officer under Penal Code § 69. Officer TALMO arrested JASON SENA because he was in imminent fear of losing his life. (UMF 155.)

At the time of the arrest, Officer TALMO had personally observed JASON SENA's violent tendencies earlier in the day when he was forced to eject JASON SENA from the Records Office lobby after JASON SENA had yelled at and threatened the staff there. Earlier that day, Officer TALMO was called to assist Officer SALGADO at the Records Office lobby because JASON SENA was out of control and created a public disturbance in the Records Office lobby, after being asked to leave. JASON SENA was yelling profanities at the Records Office personnel and yelling "mother fucking police" at the top of his lungs in the Records Office lobby. (UMF 98, 99, 100, 103.) When Officer Talmo ordered JASON SENA to leave the premises, the first time, JASON SENA stated to Officer Talmo: "Fuck you guys, if I don't leave are you going to shoot me?" (UMF 112.) Once JASON SENA left the Records Office, he went to a fast-food restaurant across the street from the Records Office. While at the fast-food restaurant, JASON SENA was fist-fighting with the bushes, and was "swinging violently at the bushes as if he were in a boxing match, punching the bushes ... and he was swinging left an right, left and right, over and over again as if he were pounding somebody." (UMF 120, 121.) At this time, JASON SENA was also "was yelling and screaming at the top of his lungs" and "cursing out of his mind." (UMF 122.)

1 JASON SENA yell at Officers TALMO and SALGADO: "Fuck you, cops. I  
 2 bet you'd like to shoot me with your guns. Fuck you, pussies." (UMF 132.) "Fuck  
 3 you, cops. I won't let you shoot me. I'll come back and shoot all you mother  
 4 fuckers." (UMF 133.) After JASON SENA told Officer TALMO, "Fuck you cops, I  
 5 won't let you shoot me, I'll come back and shoot all you mother fuckers," Officer  
 6 TALMO decided to go into the MPD station and generate a crime report for terrorists  
 7 threats by JASON SENA against him and Officer Salgado so that detectives could  
 8 handle the case. (UMF 136.)

9 When Officer TALMO confronted JASON SENA for the second time in the  
 10 Records Office lobby, he kept replaying JASON SENA's threats to him earlier in the  
 11 day: "Fuck you, cops. I won't let you shoot me. I'll come back and shoot all you  
 12 mother fuckers." (UMF 156.) Officer TALMO believed that JASON SENA had  
 13 actually come back to the Records Officer to carry out his threats and kill him. (UMF  
 14 156.) Further, Officer TALMO did not know if he had any police back-up when he  
 15 was facing off with JASON SENA. (UMF 154.) As JASON SENA stood looking at  
 16 him with his hands in his jacket pocket, Officer TALMO believed that JASON SENA  
 17 was reaching for something under his jacket or shirt. (UMF 174.) Based on his belief  
 18 that JASON SENA was going to shoot him, Officer Talmo then deployed two Taser  
 19 darts into JASON SENA's chest area, (UMF 157) and immediately handcuffed  
 20 JASON SENA while he was on the Records Office lobby floor. (UMF 159.)

21 As JASON SENA placed Officer TALMO in imminent fear of losing his life,  
 22 there is no doubt that he had adequate probable cause to use less-than-lethal force to  
 23 subdue and arrest JASON SENA on April 5, 2006.

24 **2. Defendant Officers TALMO And SALGADO Did Not Use**  
 25 **Excessive Force Upon JASON SENA On April 5, 2006.**

26 Given the circumstances, Officer TALMO's use of force in the Records Office  
 27 lobby was not excessive. After Officer TALMO shot JASON SENA with the Taser

1 darts, he and Officer SALGADO transported JASON SENA from the Records Office  
2 lobby floor to the MPD station. (UMF 178.) Officers TALMO and SALGADO did  
3 not strike, kick, or throw JASON SENA into any walls en route to the MPD booking  
4 area. (UMF 178.)

5 **3. SHARON SENA's Claims Against Defendant TALMO Relative**  
6 **To The Incident Of April 5, 2006 Are Without Merit.**

7 SHARON SENA's claim that Officer TALMO "physically threw her out of the  
8 Records Office lobby" is simply not credible.

9 The front door of the Records Office lobby was closed when SHARON SENA  
10 claims that Officer TALMO threw SHARON SENA out of the Records Office lobby.  
11 (UMF 167.) SHARON SENA does not recall hitting the closed glass door when she  
12 claims that Officer TALMO threw her out the front door. (UMF 169.) What is  
13 noteworthy is that when SHARON SENA claims that she regained consciousness  
14 after being ejected from the Records Office lobby, she did not ask any civilians for  
15 help as she was allegedly on the sidewalk in front of the Records Office lobby.  
16 (UMF 180.) SHARON SENA's reason for not asking for help is shocking: SHARON  
17 SENA did not ask any civilians for help after she had regained consciousness simply  
18 because "these people were Hispanic." (UMF 181.)

19 Among other uncontroverted material facts in the Separate Statement,  
20 SHARON SENA maintained that she ardently sought help for her son JASON SENA,  
21 whom she believed had just been shot with a real gun. (UMF 185.) However, rather  
22 than tell people that she believed her son JASON SENA had just been shot, she went  
23 to the MPD station in order to file a complaint against the agency. (UMF 193-200.)  
24 Even more disturbing, SHARON SENA's first telephone call to anyone after the  
25 incident was to her daughter, in which she asked "whether the Maywood-Cudahy  
26 Police Department was a part of the Sheriff's Department or if it was its own entity."  
27 (UMF 205.) She did not even tell her daughter during that phone conversation that

1 her son JASON SENA had just been shot. (UMF 207.)

2 Based on SHARON SENA's haste to make a complaint against the MPD rather  
3 than try in earnest to help her son whom she believed was just shot, her claims against  
4 Defendants are wholly without merit.

5 **4. Defendant Officer SALGADO Had Official Discretion To Release**  
6 **JASON SENA's Impounded Vehicle On April 5, 2006.**

7 On the day in question, Officer SALGADO was a supervisor of the Records  
8 Officer and had specific duties relative to the functions of the Records Office. (UMF  
9 221.) Per MPD policy, Officer SALGADO had discretion on whether or not to  
10 release a vehicle from impound on April 5, 2006. (UMF 222.) Depending on the  
11 circumstances of the particular individual requesting the release, a vehicle cannot be  
12 released. (UMF 223.) He was under no duty at the time to release the vehicle to  
13 JASON SENA, especially given the fact that JASON SENA had caused a public  
14 disturbance on two occasions at the Records Office.

15 Further, as exemplified in *Miranda v. City of Cornelius* (9<sup>th</sup> Cir. 2005) 429 F.3d  
16 858, the Ninth Circuit recognizes the "Community Caretaking Function." In *Miranda*  
17 *v. City of Cornelius*, the plaintiffs, as in the instant case, sued the city under 42 U.S.C.  
18 § 1983, alleging that the impoundment of their vehicle violated their constitutional  
19 rights under the Fourth and Fourteenth Amendments. Under the "Community  
20 Caretaking Function," law enforcement agents are allowed to impound a vehicle if  
21 the driver's violation of a traffic regulation prevents the driver from lawfully  
22 operating the vehicle, and also if it is necessary to remove the vehicle from a public  
23 location.

24 Here, JASON SENA was stopped in a residential area, and was the only  
25 occupant of his vehicle. It was unreasonable for the Defendant Officers to allow the  
26 vehicle to remain in the public location, as JASON SENA did not have a means of  
27 driving it off to a secure location. Further, JASON SENA parked the vehicle such

1 that it was not pulled over completely to the curb, and as such, created a hazard to  
 2 vehicular traffic on W. Santa Ana Street, where he was stopped. As law enforcement  
 3 agents can readily avail themselves of the "Community Caretaking Function,"  
 4 Plaintiffs' claim is wholly porous.

5 **C. DEFENDANT OFFICER TALMO HAS QUALIFIED IMMUNITY**  
 6 **RELATIVE TO THE INCIDENT OF APRIL 7, 2006.**

7 On April 7, 2007, Officer TALMO's superiors told him at a briefing or station  
 8 detail that through an error in the court system, the Los Angeles Sheriff's  
 9 Department, or detectives at the MPD, the probable cause determination on JASON  
 10 SENA regarding the felony charges of April 5, 2007 was expiring. (UMF 239, 240,  
 11 242.) Officer TALMO's superiors instructed Officer TALMO to go to the Los  
 12 Angeles County Jail on April 7, 2007, re-arrest JASON SENA, and re-book JASON  
 13 SENA at the MPD that day. (UMF 243, 244, 245.) Officer TALMO followed his  
 14 superiors' orders.

15 Officer TALMO called L.A. County Sheriff's personnel in order to have  
 16 JASON SENA placed into Officer Talmo's custody. (UMF 246) The Sheriff's  
 17 personnel did not inform Officer TALMO that JASON SENA had already been  
 18 ordered released in court that day. (UMF 247, 248, 255.) When Officer TALMO  
 19 arrived at the Los Angeles County Jail, two Sheriff's deputies passed custody of  
 20 JASON SENA to Officer TALMO. (UMF 232.) Neither of the deputies informed  
 21 Officer TALMO that JASON SENA was subject to a court-ordered release. (UMF  
 22 247, 248, 255.) Further compounding the mistake, **at no time ever** did JASON  
 23 SENA tell Officer TALMO or any other law enforcement officer that he had been  
 24 ordered released that day. (UMF 262.) Thus, throughout the entire car ride to MPD  
 25 from Los Angeles County Jail, throughout the entire re-booking process at MPD, and  
 26 throughout the entire car ride from MPD back to Los Angeles County Jail, JASON  
 27 SENA did not tell anybody – including Officer TALMO – that he was ordered

1 released that day. (UMF 262.)

2 **1. Defendant Officer TALMO Had Probable Cause To Detain**  
 3 **JASON SENA On April 7, 2006.**

4 On April 7, 2006, MPD Sergeant Anderson requested a probable cause  
 5 determination from the court for the arrest of JASON SENA. (UMF 259.) On April  
 6 8, 2006, Judge Beverly Reid O'Connell determined that there was probable cause for  
 7 Officer TALMO's arrest of JASON SENA on April 7, 2006. (UMF 261.)

8 **2. Defendant Officer TALMO's Arrest Of JASON SENA On April**  
 9 **7, 2006 Was The Result Of A Mistake Of Fact And Law.**

10 The defense of mistake of law or fact regarding a peace officer's reliance on an  
 11 invalid probable cause determination or warrant is well established. In fact, the Ninth  
 12 Circuit has ceased to draw a distinction between mistake of law and mistake of fact.  
 13 (*Benson v. Hightower* (9<sup>th</sup> Cir. 1980) 633 F.2d 869.)

14 In *Benson v. Hightower*, a U.S. Magistrate issued a search warrant to U.S.  
 15 Customs agents for the search and seizure of South African Krugerrand gold pieces  
 16 that the agents believed were being smuggled into the United States. (*Id.*) After  
 17 seizing the Krugerrand gold pieces, the agents arrested the plaintiffs therein and an  
 18 indictment was returned charging the plaintiffs with violation of U.S. Customs laws.  
 19 (*Id.*) A trial judge subsequently dismissed the charges against the plaintiffs holding  
 20 that the Krugerrand gold pieces were currency, and thus, not declarable items. (*Id.* at  
 21 870.) Plaintiffs then filed suit against the U.S. Customs agents for violation of their  
 22 constitutional rights. (*Id.*) The district court granted defendants' motion for summary  
 23 judgment on the ground that defendants had established as a matter of law on  
 24 uncontroverted facts that qualified immunity defense. Plaintiffs appealed. The Ninth  
 25 Circuit, citing *Shelton v. U.S. Customs Service* (9<sup>th</sup> Cir. 1977) 565 F.2d 1140,  
 26 pronounced the following well established requirements: "There must have existed, at  
 27 the time and in light of all the circumstances, reasonable grounds that the action was



appropriate and the officials must have acted in good faith.” (*Benson, supra*, 633 F.2d at 870.)

The *Benson* court found that the facts supported both requirements for the qualified immunity defense, noting the “imprimatur of the neutral, independent judicial officer in issuing the warrant.” (*Id.*) After analyzing the Restatement 2d of Torts § 121, the court held: “We are not persuaded that the Restatement rule should be applied to bar the availability of the qualified immunity defense as a matter of law. Supreme Court dicta, analogous cases, and other authority support the rule that a good faith mistake of law should be treated no differently than a mistake of fact.” (*Id.* at 807-871 citing *Butz v. Economou* (1978) 438 U.S. 478; *Midwest Growers Co-Op Corp. v. Kirkemo* (9<sup>th</sup> Cir. 1976) 533 F.2d 455.) The *Benson* court asserted that public policy requires that a police officer who arrests someone in good faith and with probable cause cannot be held liable for false arrest, even though the innocence of the suspect is later proven. (*Benson, supra*, 633 F.2d at 871.) The court also stated that its holding in *Midwest Growers Co-Op Corp. v. Kirkemo* (9<sup>th</sup> Cir. 1976) 533 F.2d 455 would equally apply.

In *Midwest Growers Co-Op Corp. v. Kirkemo, supra*, the Ninth Circuit dealt with whether individual agents of the Interstate Commerce Commission (“the Commission”) were entitled to qualified immunity where they seized items from an agricultural cooperative relying on an administrative subpoena duces tecum issued by their Commission superiors. In finding that the individual agents were indeed entitled to qualified immunity for relying on their superiors’ orders, the *Midwest Growers* court laid the ground rules for the well settled law in the Ninth Circuit: “[D]efendants ... as agents of the Commission ... participated in the investigation ***under direction from their superiors and under a good faith belief*** that they were operating under a valid warrant issued by a United States Magistrate.” (*Midwest Growers, supra*, 533 F.2d at 464.) (Emphasis added.)



1 In the instant case, *Officer TALMO was directed by his superiors* to: go to the  
2 Los Angeles County Jail (UMF 243); re-arrest JASON SENA (UMF 243); transport  
3 JASON SENA back to the MPD (UMF 244); and re-book JASON SENA at the MPD  
4 (UMF 245). Prior to re-arresting JASON SENA, Officer TALMO was not informed  
5 that JASON SENA had been released on his own recognizance (UMF 248). *In good*  
6 *faith reliance on the orders he received from his superiors, Officer TALMO:* re-  
7 arrested JASON SENA (UMF 249); transported JASON SENA from Los Angeles  
8 County Jail to the MPD (UMF 250); and re-booked JASON SENA at the MPD (UMF  
9 251). Based on his superiors' instructions, Officer TALMO believed that new  
10 evidence had developed between April 5, 2006 and April 7, 2006, such that re-  
11 arresting JASON SENA was not improper or unlawful. (UMF 256.)

12 The Ninth Circuit's reasoning in *Benson* and *Midwest Growers* clearly applies  
13 to the facts at hand. Like the agents in *Benson* and *Midwest Growers*, Officer  
14 TALMO had no knowledge or way of knowing that his superiors supplied him with  
15 an incorrect basis to re-arrest JASON SENA. Like the agents in *Benson* and *Midwest*  
16 *Growers*, Officer TALMO followed his superiors' direction, relying on their superior  
17 knowledge of the matter at hand. Here, as in *Benson*, there was an "imprimatur of the  
18 neutral, independent judicial officer" – namely, Judge O'Connell's determination that  
19 probable cause existed for the arrest of JASON SENA on April 7, 2006. Finally, like  
20 the agents in *Benson* and *Midwest Growers*, Officer TALMO engaged in the re-arrest  
21 with a good faith belief that he was acting in compliance with the law.

22 Given the well established reasoning in *Benson* and *Midwest Growers* as well  
23 as the strong public policy that requires that a police officer who arrests someone in  
24 good faith and with probable cause cannot be held liable for false arrest, even though  
25 the innocence of the suspect is later proven (*Benson, supra*, 633 F.2d at 871),  
26 Defendants submit that Officer TALMO is entitled to qualified immunity for his  
27 mistake of law and fact.

1 Last, as Officer TALMO was following orders from law enforcement superiors  
 2 in good faith, there is no reasonable basis that Officer TALMO used excessive force  
 3 in re-arresting JASON SENA on April 7, 2006.

4 **V. PLAINTIFFS' MONELL CLAIM FOR RELIEF AGAINST THE CITY**  
 5 **SHOULD BE DISMISSED.**

6 Local governments are “persons” subject to liability under 42 U.S.C. § 1983 in  
 7 very limited circumstances. (*Monell v. Dep’t. of Soc. Serv.* (1978) 436 U.S. 658, 690,  
 8 98 S.Ct. 2018, 56 L.Ed.2d 611.) Cities may only be held liable under § 1983 where a  
 9 government actor commits an unconstitutional act pursuant to a custom or policy, or  
 10 if a final policymaker committed the act. (*Gable v. City of Chicago* (7<sup>th</sup> Cir. 2002)  
 11 296 F.3d 531, 537.) Where plaintiff seeks to impose liability based on a city’s  
 12 alleged custom or policy, plaintiff must produce evidence that the custom or policy  
 13 was the “moving force behind the constitutional violation.” (*City of Canton v. Harris*  
 14 (1989) 489 U.S. 378, 389, 109 S.Ct. 1197; 103 L.Ed.2d 412.) A city is only liable  
 15 when the city itself causes the constitutional violation. (*Id.*) “[P]laintiff must show  
 16 that the municipal action was taken with the requisite degree of culpability and must  
 17 demonstrate a direct causal link between the municipal action and the deprivation of  
 18 federal rights.” (*Board of Comm’rs of Bryan County v. Brown* (1997) 520 U.S. 397,  
 19 404, 117 S.Ct. 1382, 137 L. Ed.2d 626.) Plaintiff’s burden in establishing causation  
 20 is a heavy one. (*City of Canton, supra*, 489 U.S. at 385.)

21 Cities may not be charged with liability for the unconstitutional discretionary  
 22 actions of city employees under § 1983. (*City of St. Louis v. Praprotnik* (1988) 485  
 23 U.S. 112, 108 S.Ct. 915, 99 L.Ed.2d 107.) Cities are not vicariously liable under §  
 24 1983 for the random acts or isolated unconstitutional acts by non-policymaking  
 25 employees. (*McDade v. WEST* (9<sup>th</sup> Cir. 2000) 223 F.3d 1135, 1142 ; *Trevino v. Gates*  
 26 (9<sup>th</sup> Cir. 1996) 99 F.3d 911, 918; *Thompson v. City of Los Angeles* 885 (9<sup>th</sup> Cir. 1997)  
 27 F.2d 1439, 1444.) Cities are not liable where the alleged deprivation cannot be

1 attributed to conduct which was performed as official city policy. (*Blair v. City of*  
 2 *Pomona* (9<sup>th</sup> Cir. 2000) 223 F.3d 1074 .)

3 Where plaintiff seeks to impose *Monell* liability based on an informal custom  
 4 or practice, plaintiff must show that the informal conduct was so frequent or  
 5 pervasive that it must necessarily have come to the attention of the responsible  
 6 policymaker who then acted with deliberate indifference in failing to correct the  
 7 conduct. (*City of Canton, supra*, 489 U.S. at 378.) Deliberate indifference is a  
 8 conscious choice to follow a course of action among various alternatives. (*Id.* at  
 9 384.) The conduct must be so permanent and settled that it amounts to a custom or  
 10 usage with the force of law. (*City of St. Louis, supra*, 485 U.S. at 112.)

11 Case law is replete with situations wherein the circuit courts have ruled that  
 12 plaintiffs failed to demonstrate that a custom was so widespread or pervasive so as to  
 13 subject the local governmental entity to liability under § 1983. In *Carter v. District of*  
 14 *Columbia*, the court held that seven deaths and other scattered incidents of police  
 15 misconduct did not coalesce into a policy. (*Carter v. District of Columbia* (D.C. Cir.  
 16 1986) 795 F. 2d 116, 123-124.) The court noted that if that were the case, “then  
 17 practically every large metropolitan police force...could be targeted for liability.”  
 18 (*Id.* at 123.) In *Hamilton v. Rodgers*, the court held that evidence of a dozen incidents  
 19 of racist bigotry and supervisory knowledge of these incidents over a two and one-  
 20 half year period was insufficient to establish a policy of bigotry. (*Hamilton v.*  
 21 *Rodgers* (5<sup>th</sup> Cir. 1986) 791 F.2d 439, 443-444.) The court found it significant that  
 22 there was no officially promulgated policy encouraging racial discrimination and  
 23 there was in fact a departmental rule explicitly prohibiting racial slurs or jokes. (*Id.*)

24 To establish *Monell* liability in this matter, the evidence must demonstrate that  
 25 the employees were “highly likely” to inflict the particular injury suffered by the  
 26 Plaintiffs; a finding of culpability cannot rest on a mere probability that an officer  
 27 inadequately trained will inflict any constitutional injury. (*Board of County Comm’rs*

1 *v. Brown* (1997) 520 U.S. 397, 405-408, 412, 117 S.Ct. 1382, 137 L.Ed.2d 626  
 2 [county was not liable for excessive force committed by deputy, even though sheriff  
 3 hired deputy despite lengthy criminal record, including assault and battery, resisting  
 4 arrest and public drunkenness]; see also *Aguillard v. McGowan* (5<sup>th</sup> Cir. 2000) 207  
 5 F.3d 226 [county was not liable for shooting death committed by deputy during  
 6 execution of arrest warrant even though deputy had a prior law enforcement record  
 7 where there was no evidence that the deputy had ever wrongfully shot someone or  
 8 was trigger happy].)

9 In the present matter, Plaintiffs allege that the MPD knew or should have  
 10 known that the Defendant Officers had a history, propensity, and pattern of using  
 11 excessive force, falsifying records, and using unreasonable police tactics, among  
 12 other things. (Complaint, paras. 40-46.) Plaintiffs allege these policies and customs  
 13 perpetuated a code of silence and were a moving force in the violations of Plaintiffs'  
 14 constitutional rights. (*Id.* at para. 44.)

15 **A. PLAINTIFFS CANNOT PROVE AN UNDERLYING**  
 16 **CONSTITUTIONAL VIOLATION.**

17 A city cannot be held liable under § 1983 in the absence of an underlying  
 18 constitutional violation. (*City of Los Angeles v. Heller* (1986) 475 U.S. 796, 106  
 19 S.Ct. 1571, 89 L.Ed.2d 806 [if officer acted constitutionally, city cannot be held  
 20 liable]; see also *Quintanilla v. City of Downey* (9<sup>th</sup> Cir. 1996) 84 F.3d 353, 354-356 .)

21 Plaintiffs have not and cannot provide evidence that any of the Defendant  
 22 Officers violated their constitutional rights. As shown in the Defendants' Separate  
 23 Statement of Uncontroverted Material Facts and Supporting Evidence, in each instance,  
 24 the Defendant Officers made arrests with probable cause and used reasonable force.  
 25 Plaintiffs cannot point to any evidence that shows that the policymakers of the City of  
 26 Maywood acted with such deliberate indifference such as to promote and maintain a  
 27 band of "renegade cowboys."

**B. PLAINTIFFS HAVE NOT APPROPRIATELY IDENTIFIED THE CUSTOMS OR POLICIES THAT CAUSED THEIR CONSTITUTIONAL DEPRIVATION.**

Plaintiffs must identify the custom or policy that he claims is the cause of the constitutional deprivation. (*Board of County Comm'rs, supra*, 520 U.S. at 403.) In *Wayne v. Jarvis*, the 11<sup>th</sup> Circuit held that plaintiff failed to appropriately identify inmates who were allegedly housed with inmates with AIDS and therefore he failed to show that the county had a custom or policy in this regard. (*Wayne v. Jarvis* (11<sup>th</sup> Cir. 1999) 197 3d 1098, 1105.)

Plaintiffs have failed to present any evidence of City policies, practices, procedures or any informal customs which caused Plaintiffs to be deprived of their civil rights. Plaintiffs have not presented any evidence as to how often the alleged policies of a "code of silence" occurred such as to indicate a trend or true pattern. Finally, Plaintiffs have failed to present any evidence that the Defendant Officers were "highly likely" to inflict the particular injury allegedly inflicted.

Similarly, Plaintiffs have failed to present any evidence regarding their inappropriate promotion claim. Plaintiffs have not presented any evidence regarding which City employees and/or policymakers inappropriately promoted which employees. Plaintiffs have failed to present evidence as to when any of this inappropriate promotion occurred. Plaintiffs have not presented any evidence as to how often this occurred.

**C. PLAINTIFFS HAVE NOT PRESENTED EVIDENCE REGARDING ANY UNCONSTITUTIONAL ACTS BY FINAL POLICYMAKERS.**

Plaintiffs have alleged that defendant Chief of Police Leflar is a final policymaker, but he has not presented any proof of this allegation. Even assuming that Chief Leflar is a final policymaker, Plaintiff has not presented any proof that Chief Leflar committed any or participated in any unconstitutional act.

**D. PLAINTIFFS HAVE NOT ESTABLISHED A CAUSAL LINK  
BETWEEN ANY MUNICIPAL POLICY, CUSTOM OR  
SUPERVISORY ACT AND THEIR ALLEGED INJURY.**

Plaintiffs must show a close causal relation between the policy, custom or supervisory act and the injury suffered. (*Johnson v. Hardin County* (6<sup>th</sup> Cir. 1990) 908 F.2d 1280, 1285; see also *Colburn v. Upper Darby Township* (3d Cir. 1991) 946 F.2d 1017, 1028 [identified deficiency in training program must be closely related to the ultimate constitutional injury].)

Plaintiffs have failed to present any evidence regarding causation in support of their *Monell* claim. Rather, Plaintiffs have set forth unsupported allegations regarding scattered incidents. These “scattered incidents” “do not coalesce into policy.” Plaintiffs have not presented evidence of the allegedly improper customs/policies and has failed to supply any evidence of a causal connection between the improper customs/policies and their constitutional injuries. Plaintiffs have not presented evidence demonstrating that the City’s policies or customs were the “moving force” behind their injury and thus their *Monell* claim should be dismissed.

**VI. PLAINTIFF JASON SENA’S DAMAGES, IF ANY, MUST BE LIMITED  
BECAUSE HE IS NOT SUFFERING FROM ANY INJURIES AS A  
RESULT OF THE ALLEGATIONS IN THE INSTANT COMPLAINT.**

Since April 27, 2006, JASON SENA has not sought any medical attention for injuries he allegedly sustained as a result of the allegations contained in the complaint in *Sena, et al. v. City of Maywood, et al.*, Case No. CV 07-1724 AHM (JCx). (UMF 269.) On March 11, 2008, JASON SENA was asked, under oath, why he had not received any medical treatment from April 27, 2006 to the date of his deposition on March 11, 2008. (UMF 270.) JASON SENA testified under oath on March 11, 2008, that he has not received medical treatment from April 27, 2006 to the date of his deposition on March 11, 2008 because: “[T]here is – I’m not – I mean, I’m not

1 suffering, you know, from any injuries.” (UFM 271.)

2 As JASON SENA is not suffering from any injuries, his damages, if any,  
3 should be limited to only his past injuries, assuming he can present evidence of such,  
4 which he has failed to do.

5 **VII. PLAINTIFF SHARON SENA’S DAMAGES, IF ANY, MUST BE**  
6 **LIMITED BECAUSE SHE HAS FAILED TO MITIGATE ANY**  
7 **DAMAGE WHICH SHE ALLEGEDLY SUFFERED AS A RESULT OF**  
8 **THE ALLEGATIONS IN THE INSTANT COMPLAINT.**

9 SHARON SENA did not seek medical treatment for her injuries allegedly  
10 sustained as a result of Officer Talmo’s actions on April 5, 2006 until approximately  
11 6 months after April 5, 2006. SHARON SENA has not sought any sort of  
12 professional medical or psychological treatment for her claim of emotional distress.  
13 SHARON SENA does not know if she suffers from post traumatic stress disorder as a  
14 result of the incident of April 5, 2006. SHARON SENA has not seen any health care  
15 provider for her alleged fear of police officer as a result of the incident of April 5,  
16 2006. SHARON SENA has not seen any health care provider for her alleged sleep  
17 disorders as a result of the incident of April 5, 2006. SHARON SENA does not suffer  
18 from nightmares as a result of the incident of April 5, 2006. (UMF 272-277.)

19 As SHARON SENA has not ascertained to date her physical and mental  
20 damages, if any, this court should limit her claim to compensatory damages for such  
21 uncertain injuries. Further, Defendants respectfully request that this court consider  
22 that SHARON SENA has wholly failed to mitigate any alleged injury, and as such,  
23 she should be barred from, benefiting from her failure to seek appropriate medical  
24 attention, if such attention is actually needed.

25 ///

26 ///

27 ///



1 **VIII. CONCLUSION**

2 Based on the foregoing, Defendants respectfully request that this Court grant  
3 this Motion for Summary Judgment, or in the alternative, Partial Summary Judgment.

4 Respectfully Submitted,

5 Dated: March 31, 2008

BOHM, MATSEN, KEGEL & AGUILERA, LLP

6  
7  
8 By: 

Matthew J. Salcedo,  
Attorneys for Defendants CITY OF  
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## PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Costa Mesa, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 695 Town Center Drive, Suite 700, Costa Mesa, CA 92626. On March 31, 2008 I served the documents named below on the parties in this action as follows:

DOCUMENT(S) SERVED: DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT; MEMORANDUM OF POINT AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF MATTHEW J. SALCEDO

SERVED UPON: SEE ATTACHED SERVICE LIST

☐

(BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Costa Mesa, California. I am readily familiar with the practice of Bohm, Matsen, Kegel & Aguilera, LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐

(BY PERSONAL SERVICE) I delivered to an authorized courier or driver authorized by U.S. Delivery Systems to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed forthwith.

☐

(BY FEDERAL EXPRESS) I am readily familiar with the practice of the Bohm, Matsen, Kegel & Aguilera, LLP for the collection and processing of correspondence for overnight delivery and known that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

☐

(BY FACSIMILE WHERE INDICATED) The above-referenced document was transmitted by facsimile transmission and the transmission was reported as complete and without error. Pursuant to C.R.C. 2009(l), I caused the transmitting facsimile machine to issue properly a transmission report, a copy of which is attached to this Declaration.

☒

(BY ELECTRONIC FILING WITH THE U.S. DISTRICT COURT) By submitting said documents for Electronic Case Filing on said date pursuant to Local Rule 5-4 and General Order 45, at Bohm, Matsen, Kegel & Aguilera, LLP, 695 Town Center Drive, Suite 700, Costa Mesa, CA 92626.

☐

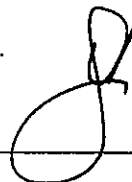
(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on March 31, 2008, at Costa Mesa, California.

KYM SMITH



Service List

***Sena v. City of Maywood***  
***United States District Court, Central (Los Angeles),***  
***Case Number CV07-1724 AHM (JCx)***

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